

kkNOTE: As provided in LFC policy, this report is intended only for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used in any other situation.

Only the most recent FIR version (in HTML & Adobe PDF formats) is available on the Legislative Website. The Adobe PDF version includes all attachments, whereas the HTML version does not. Previously issued FIRs and attachments may be obtained from the LFC's office in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT



SPONSOR: McSorley DATE TYPED: 02/12/02 HB _____

SHORT TITLE: Prescription Drugs Price Reporting SB 263/aSPAC/aSFL # 1

ANALYST: Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
	\$25.0			Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 264 and SB 226

SOURCES OF INFORMATION

Responses Received

- Human Services Department (HSD)
- Attorney General (AG)
- Health Policy Commission (HPC)

SUMMARY

Synopsis of SFl # 1 Amendment

The Senate Floor amendment # 1 strikes the word “retail” from section 1, item C of the bill. The bill as amended indicates that a wholesaler or distributor must provide information on the actual price of a drug sold to a “pharmacy” as opposed to a “retail pharmacy”.

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment appropriates \$25.0 from the general fund to the Human Services Department for expenditure in fiscal year 2003 to process information pursuant to Section 1 of the act. Any unexpended or unencumbered balance remaining at the end of the fiscal year 2003 shall revert to the general fund.

The amendment also clarifies language pertaining to “average manufacturer price”

Synopsis of Original Bill

Senate Bill 263 requires prescription drug manufacturers to file at least annually the average manufacturer's price and the price that each New Mexico wholesaler pays for all prescription drugs sold in New Mexico. Requires wholesalers and distributors of prescription drugs in New Mexico to file the actual price at which the wholesaler or distributor sells a particular drug in New Mexico to a retail pharmacy. The bill prohibits disclosure of pricing information collected unless the identity of the entity and specific price is removed. Authorizes the Attorney General's Office to investigate and enforce the data collection requirements of the Bill.

Significant Issues

HSD acknowledges that SB263 could have a positive effect on the pending case *Starko v. HSD, et. al.* *Starko* concerns NMSA 27-2-16B, which reads "if drug product selection is permitted under Section 26-3-3 NMSA 1978, reimbursement by the Medicaid program shall be limited to the wholesale cost of the lesser expensive therapeutic equivalent drug generally available in New Mexico plus a reasonable dispensing fee of at least three dollars sixty-five cents (\$3.65)." As part of the lawsuit, plaintiffs, made up of New Mexico pharmacies, claim that "wholesale cost" refers to the Average Wholesale Price (AWP) of a particular drug item. The AWP is not the same as the actual acquisition cost to pharmacies, and the federal government distinguishes between the AWP and this "estimated acquisition cost." HSD takes the position that "wholesale cost" in 27-2-16B is intended to approximate as closely as possible the amount the drug actually cost the pharmacy. Short of repealing 27-2-16B altogether, SB263 would require drug manufacturers to disclose to HSD the actual prices that pharmacies are paying for certain medications.

ADMINISTRATIVE IMPLICATIONS

This bill could impose additional duties on the Office of the Attorney General. SB 263 would require HSD to update manual as opposed to baseline pricing which is currently done automatically through First Data Bank. SB 263 would provide more accurate pricing data.

RELATIONSHIP

HB 264 and SB 226

TECHNICAL ISSUES

The sponsor may wish to include language specifying how the data that is collected will be used.

In Section 1A: After the word "person" include *and companies..*

The definition of "average price" is a little difficult to understand. Clarifying language could be added.

OTHER SUBSTANTIVE ISSUES

HPC notes that high prescription drug prices cause some people, particularly the elderly who are on fixed incomes, to forgo or cut-back on the purchase of prescription drugs. In addition, it is reasonable to assume that some people, particularly the elderly, go without essentials such as food or heat so they can afford their medicines.

The Health Policy Commission is currently doing a prescription drug study, which is examining the availability of prescription drugs for certain segments of New Mexico's population. The Health Policy Commission will present its findings to the Legislature in the fall of 2002.

BD/ar